

AGRICULTURAL LABOR RELATIONS BOARD

OFFICE OF THE EXECUTIVE SECRETARY

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DATE: February 11, 2022

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

FROM: Ralph Lightstone, Board Member
Barry Broad, Board Member

RE: Report of the Regulations Subcommittee Re: Regs. 20202, 20220

After due consideration of the comments received at and following the Board's October 12, 2021 public meeting, the Regulations Subcommittee recommends that the Board promulgate the regulatory proposals under consideration with the exception of two regulations. As discussed below, the subcommittee recommends that the Board forego any action concerning Board regulations 20220 and 20202 at this time.

Proposed Regulation 20220—Time Limit for the Issuance of a Complaint by the General Counsel

On April 13, 2021, the Board approved a proposal by the Regulations Subcommittee to:

Establish a time limit for the General Counsel to issue a complaint after an unfair labor practice charge has been filed, subject to a motion for an extension of time for just cause. Once the time limit has passed, the charge would be deemed dismissed.

On September 22, 2021, the Regulations Subcommittee issued several reports setting forth proposed regulatory actions, including proposed amendments to regulation 20220 that generally would require an unfair labor practice complaint to issue within 12 months of the filing of an unfair labor practice charge, subject to extension in certain circumstances.

At the October 12, 2021 public meeting, the Board voted to return this proposal to the Regulations Subcommittee for reconsideration and modification. The Regulations Subcommittee thereafter solicited and received further written comments from interested parties concerning this and other proposals. In addition, the Regulations Subcommittee has studied unfair labor practice charge disposition timeframes for charges filed between 2016 and 2021. Attached to this report are tables summarizing the timeframes for the disposition of unfair labor practice charges filed during this period of time, broken down by each calendar year. Based on the information set forth in these tables, while there certainly are instances of charges whose time to disposition was unacceptably long, with respect to addressing the issue on a going-forward basis, we believe it is appropriate to forego action on our earlier proposed amendments

to regulation 20220 in order that we may continue to monitor this issue and any improvement in the disposition timeframes reflected in the tables.

Accordingly, the Regulations Subcommittee recommends the Board take no regulatory action at this time concerning this proposal. The subcommittee further recommends that the Board request that the General Counsel provide regular reports documenting the age of pending charges that remain under investigation.

Proposed Regulation 20202—Filing of an Anonymous Charge

Under our current practice, the name of the charging party is required to be stated in the charge, which is served on the charged party. Proposed Regulation 20202 would permit the regional director to redact the name of a charging party if that person has “stated a reasonable fear of retaliation from the charged party and maintaining anonymity is necessary to permit the filing of the charge.” If, after an investigation, the General Counsel files a complaint against the charged party, the name of the charging party would still be revealed.

The principal purpose of this proposed regulation is to protect charging parties who are agricultural employees from discrimination or retaliation for filing a charge. Some administrative agencies, such as CalOSHA, routinely accept anonymous reporting of alleged unsafe working conditions. Other agencies, notably the National Labor Relations Board, do not confer anonymity on charging parties.

While allowing charging parties to maintain their anonymity during the investigation of a charge could encourage agricultural employees who fear discrimination or retaliation to come forward, we are concerned that redacting the name of the charging party may weaken the legal protection that is afforded the charging party by the very act of revealing their identity. Once the charge is filed, the charging party is legally protected from discrimination and retaliation for using the Board’s processes and it is considerably more difficult for the charged party to evade responsibility for retaliatory adverse action taken against the charging party by claiming to have been ignorant of the filing of the charge.

Moreover, in many instances, the very facts alleged in the charge or disclosed in the discovery process may reveal the identity of the charging party, thereby affording the charging party a false sense of security that the charged party does not know their identity. Due to this concern, investigators may be reluctant in some cases to request information from charged parties that might indirectly reveal the identity of a charging party who has requested anonymity, potentially chilling the investigation process. In any event, the anonymity of the charging party is transitory, as the name of the charging party will be revealed if a complaint is issued.

A similar concern arises with regard to the settlement process. The general policy of the ALRB is to favor settlement of cases and many cases are settled before a complaint is issued. If the charging party is alleging that the charged party engaged in discriminatory or retaliatory conduct against them, it is difficult to see how anonymity can be maintained where the settlement discussions must necessarily relate to what happened to the charging party and may require remediation specific to the charging party, such as backpay, rescinding of discipline, etc. Thus, anonymity may have the unanticipated, and undesired, result of making settlement efforts more difficult.

Finally, anonymity of charging parties may complicate the pre-complaint discovery process. Requests for information and investigatory subpoenas must remain within the scope of the charge. If the charged party asserts that an information request or investigatory subpoena lacks

sufficient specificity to determine whether it is within the scope of the charge, the identity of the charging party may have to be revealed.

Accordingly, after due consideration, the subcommittee recommends not moving forward with this proposal at this time.

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2021

Total Charges
46

Complaints Issued	
Total	0

< 1 Year	
> 1 Year	
> 18 Months	
> 2 Years	
> 3 Years	

Withdrawals	
Total	4

< 1 Year	4
> 1 Year	
> 18 Months	
> 2 Years	
> 3 Years	

Dismissals	
Total	2

< 1 Year	2
> 1 Year	
> 18 Months	
> 2 Years	
> 3 Years	

Settlements	
Total	6

< 1 Year	6
> 1 Year	
> 18 Months	
> 2 Years	
> 3 Years	

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	12	26%
> 1 Year		
> 18 Months		
> 2 Years		
> 3 Years		

Charges Pending:

	Total	% of Total Number of Charges Filed
< 6 Months	9	20%
> 6 Months	25	54%
> 1 Year		
> 18 Months		
> 2 Years		

*based on information available as of 2/1/2022

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2020

<u>Total Charges</u>
85

<u>Complaints Issued</u>	
Total	9

< 1 Year	2
> 1 Year	4
> 18 Months	3
> 2 Years	
> 3 Years	

<u>Withdrawals</u>	
Total	7

< 1 Year	6
> 1 Year	
> 18 Months	1
> 2 Years	
> 3 Years	

<u>Dismissals</u>	
Total	19

< 1 Year	9
> 1 Year	6
> 18 Months	4
> 2 Years	
> 3 Years	

<u>Settlements</u>	
Total	23

< 1 Year	18
> 1 Year	5
> 18 Months	
> 2 Years	
> 3 Years	

Disposition Event Totals:

	<u>Total</u>	<u>% of Total Number of Charges Filed</u>
< 1 Year	35	41%
> 1 Year	15	18%
> 18 Months	8	9%
> 2 Years		
> 3 Years		

Charges Pending:

	<u>Total</u>	<u>% of Total Number of Charges Filed</u>
< 1 Year		
> 1 Year	14	16%
> 18 Months	11	13%
> 2 Years	2	2%
> 3 Years		

**based on information available as of 2/1/2022*

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2019

Total Charges
83

Complaints Issued	
Total	14

< 1 Year	8
> 1 Year	3
> 18 Months	2
> 2 Years	1
> 3 Years	

Withdrawals	
Total	8

< 1 Year	8
> 1 Year	
> 18 Months	
> 2 Years	
> 3 Years	

Dismissals	
Total	32

< 1 Year	18
> 1 Year	6
> 18 Months	3
> 2 Years	5
> 3 Years	

Settlements	
Total	17

< 1 Year	15
> 1 Year	
> 18 Months	
> 2 Years	2
> 3 Years	

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	49	59%
> 1 Year	9	11%
> 18 Months	5	6%
> 2 Years	8	10%
> 3 Years		

Charges Pending:

	Total	% of Total Number of Charges Filed
< 1 Year		
> 1 Year		
> 18 Months		
> 2 Years	12	14%
> 3 Years		

*based on information available as of 2/1/2022

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2018

Total Charges	Complaints Issued		Withdrawals		Dismissals		Settlements	
103	Total	28	Total	13	Total	35	Total	25
	< 1 Year	18	< 1 Year	10	< 1 Year	15	< 1 Year	13
	> 1 Year	3	> 1 Year	1	> 1 Year	13	> 1 Year	7
	> 18 Months	2	> 18 Months		> 18 Months	2	> 18 Months	2
	> 2 Years	4	> 2 Years	1	> 2 Years	3	> 2 Years	2
	> 3 Years	1	> 3 Years	1	> 3 Years	2	> 3 Years	1

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	56	54%
> 1 Year	24	23%
> 18 Months	6	6%
> 2 Years	10	10%
> 3 Years	5	5%

Charges Pending:

	Total	% of Total Number of Charges Filed
< 1 Year		
> 1 Year		
> 18 Months		
> 2 Years		
> 3 Years	2	2%

*based on information available as of 2/1/2022

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2017

Total Charges	Complaints Issued		Withdrawals		Dismissals		Settlements	
133	Total	29	Total	28	Total	44	Total	32
	< 1 Year	14	< 1 Year	25	< 1 Year	26	< 1 Year	26
	> 1 Year	6	> 1 Year	1	> 1 Year	6	> 1 Year	3
	> 18 Months	5	> 18 Months	1	> 18 Months	8	> 18 Months	1
	> 2 Years	2	> 2 Years		> 2 Years	3	> 2 Years	2
	> 3 Years	2	> 3 Years	1	> 3 Years	1	> 3 Years	

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	91	68%
> 1 Year	16	12%
> 18 Months	15	11%
> 2 Years	7	5%
> 3 Years	4	3%

**based on information available as of 2/1/2022*

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2016

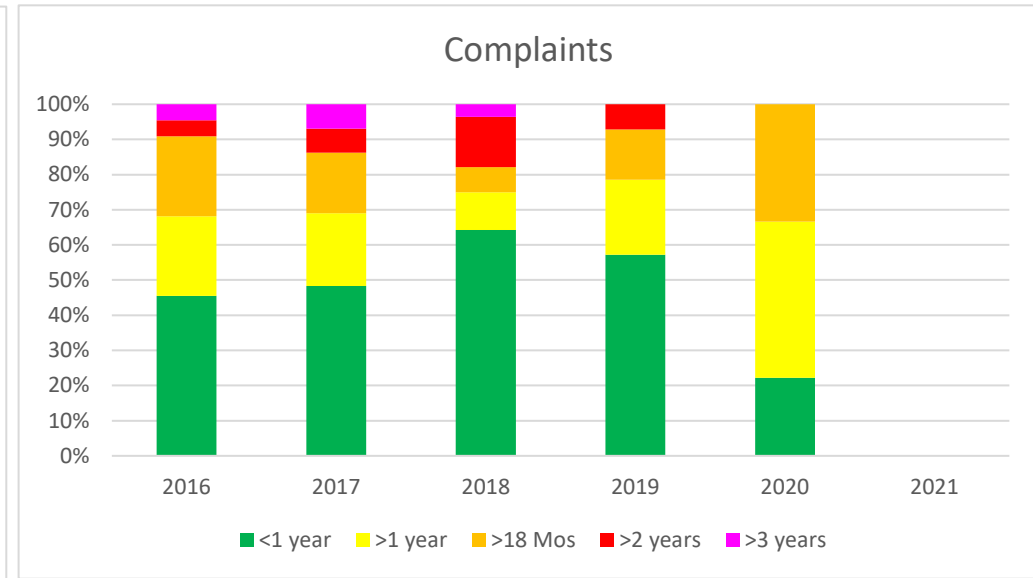
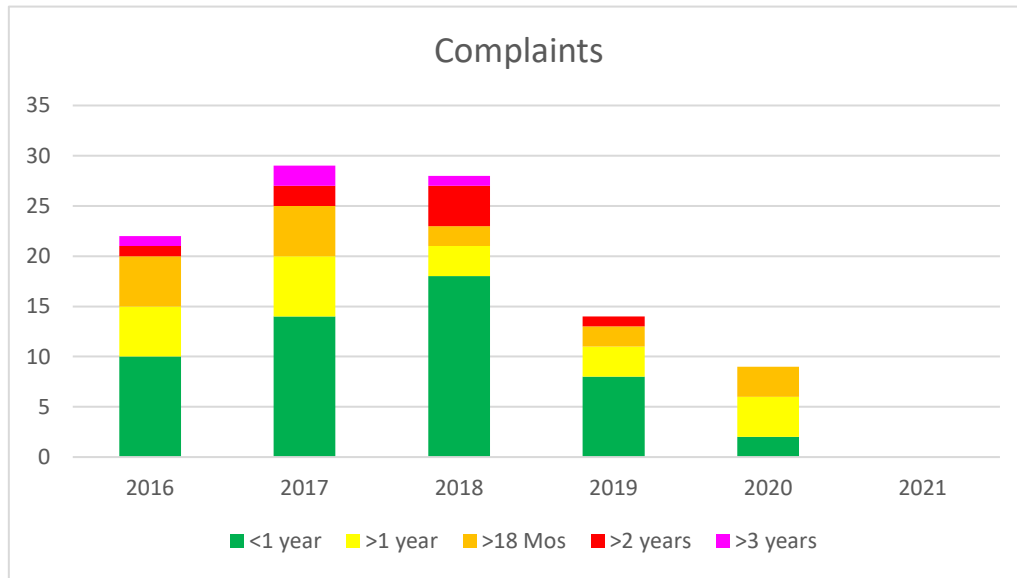
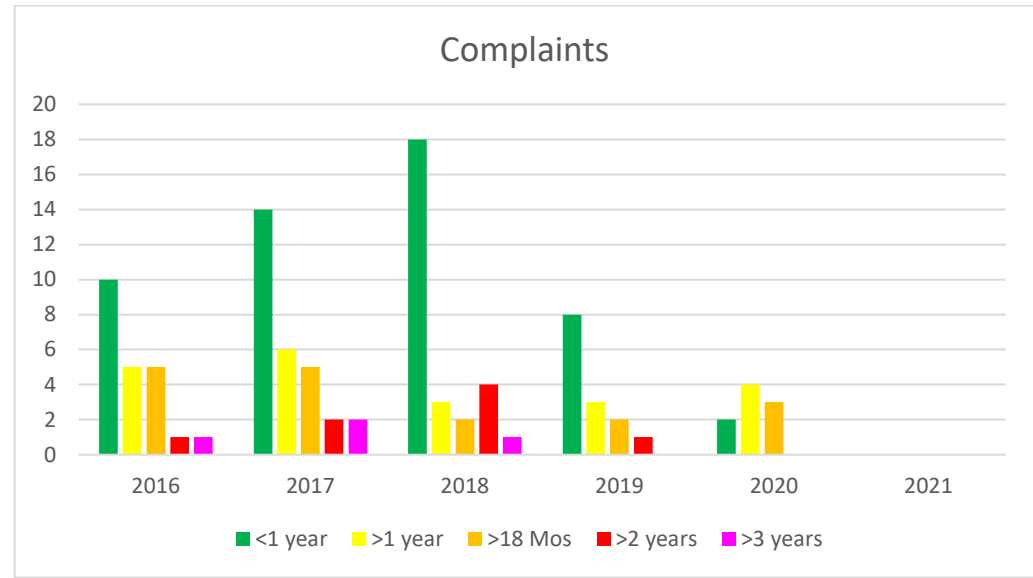
Total Charges	Complaints Issued		Withdrawals		Dismissals		Settlements	
80	Total	22	Total	13	Total	35	Total	10
	< 1 Year	10	< 1 Year	11	< 1 Year	16	< 1 Year	2
	> 1 Year	5	> 1 Year	1	> 1 Year	9	> 1 Year	4
	> 18 Months	5	> 18 Months	1	> 18 Months	2	> 18 Months	2
	> 2 Years	1	> 2 Years		> 2 Years	6	> 2 Years	1
	> 3 Years	1	> 3 Years		> 3 Years	2	> 3 Years	1

Disposition Event Totals:

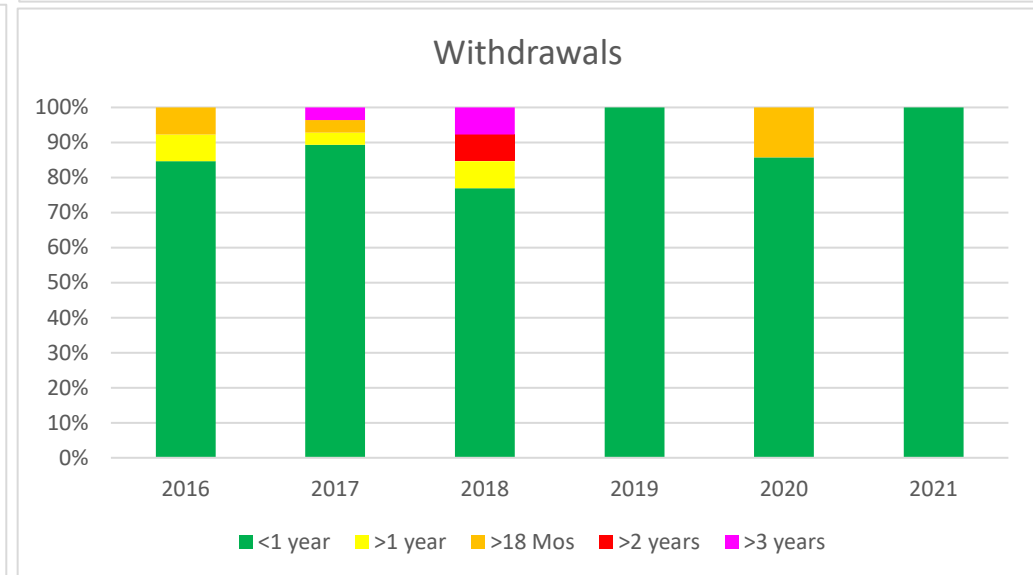
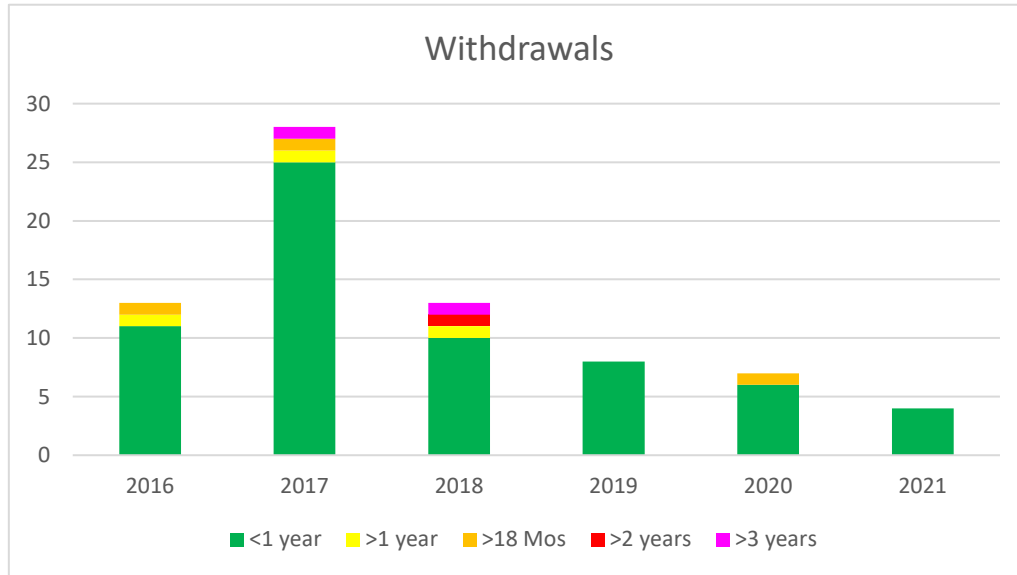
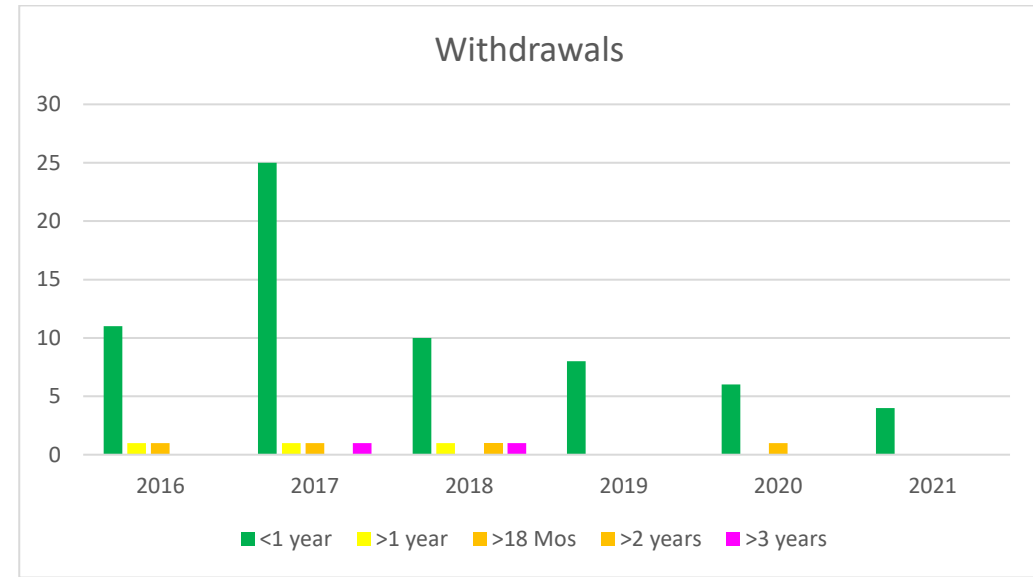
	Total	% of Total Number of Charges Filed
< 1 Year	39	49%
> 1 Year	19	24%
> 18 Months	10	13%
> 2 Years	8	10%
> 3 Years	4	5%

*based on information available as of 2/1/2022

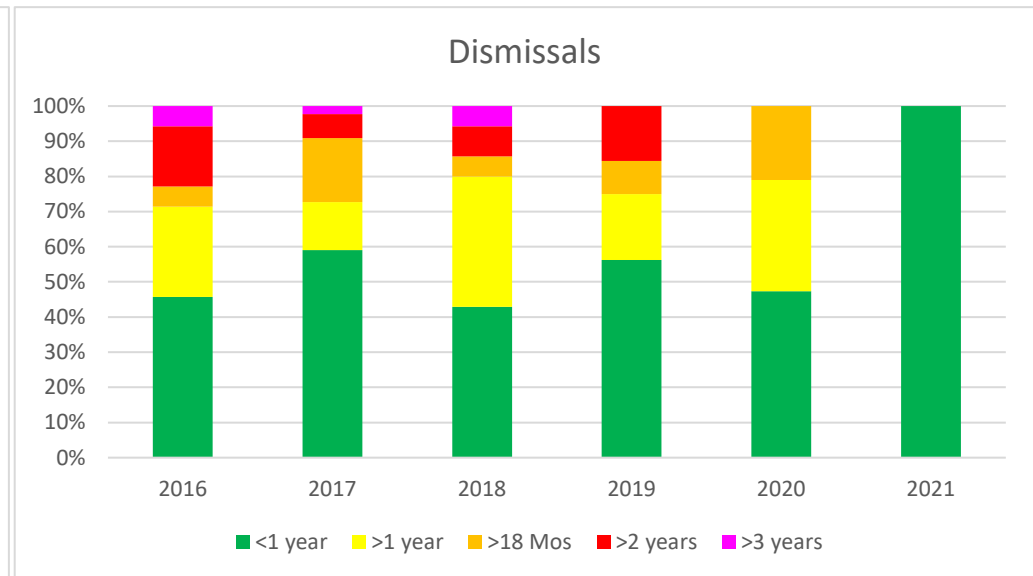
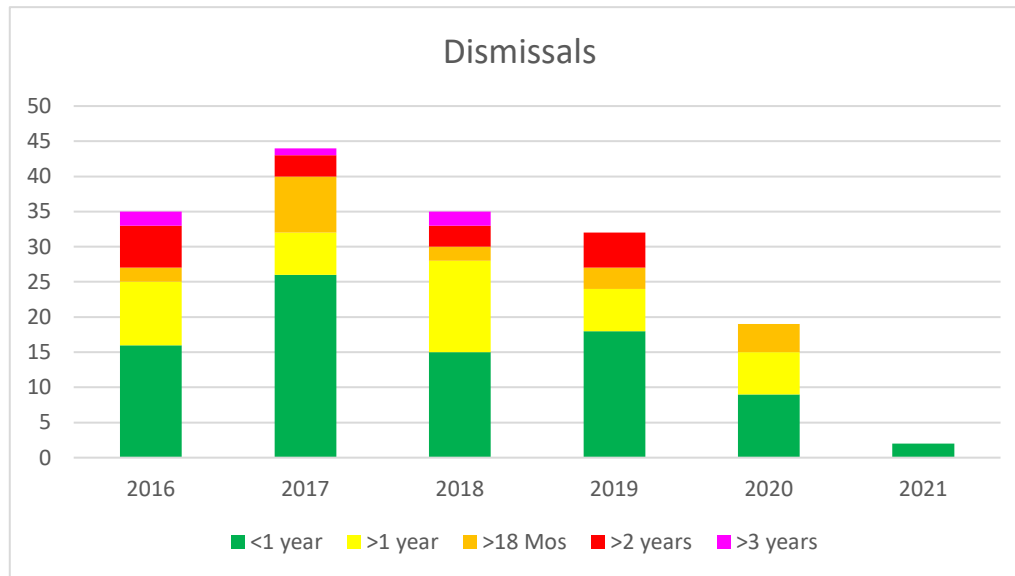
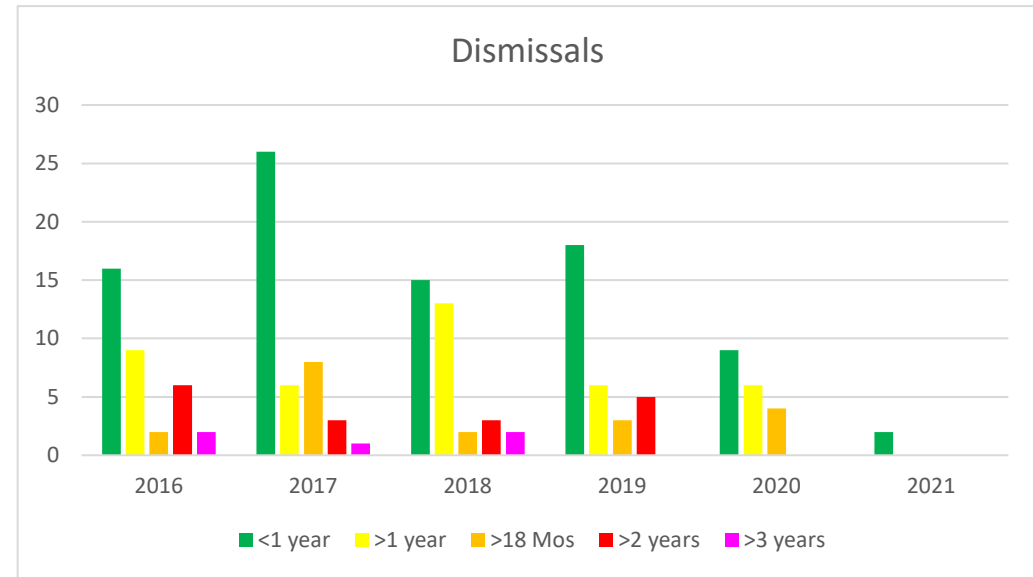
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<1 year	10	14	18	8	2	0
>1 year	5	6	3	3	4	0
>18 Mos	5	5	2	2	3	0
>2 years	1	2	4	1	0	0
>3 years	1	2	1	0	0	0



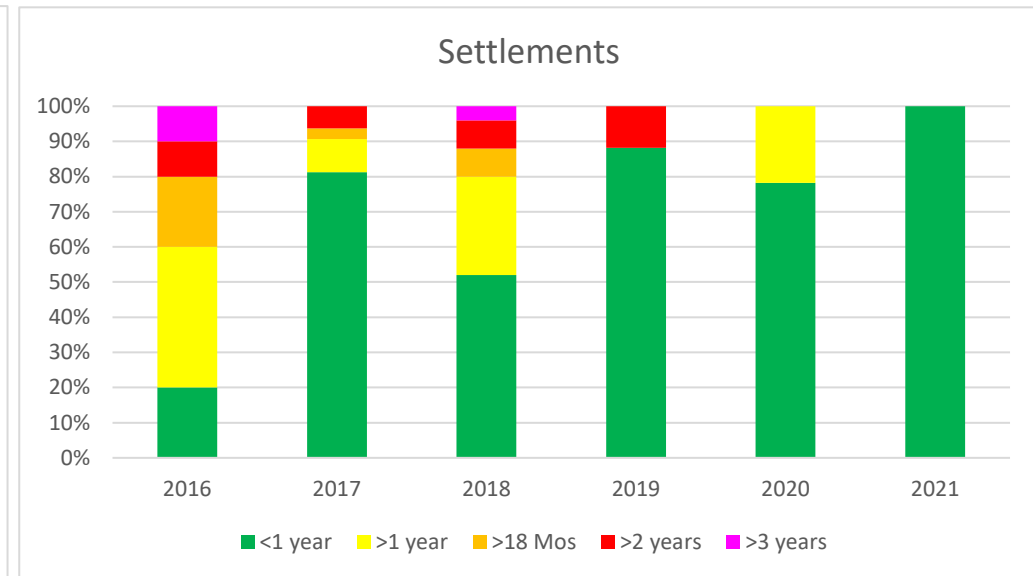
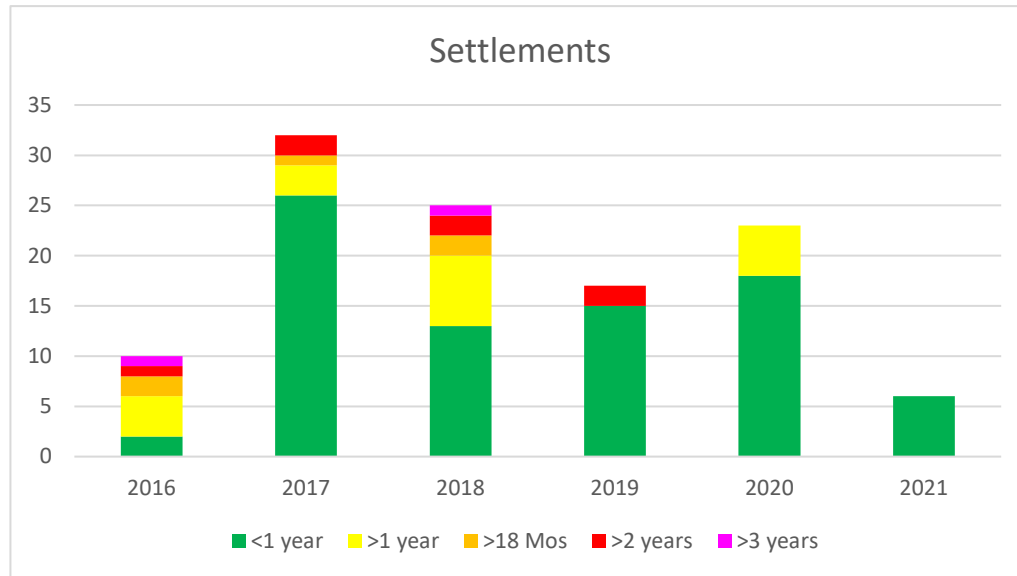
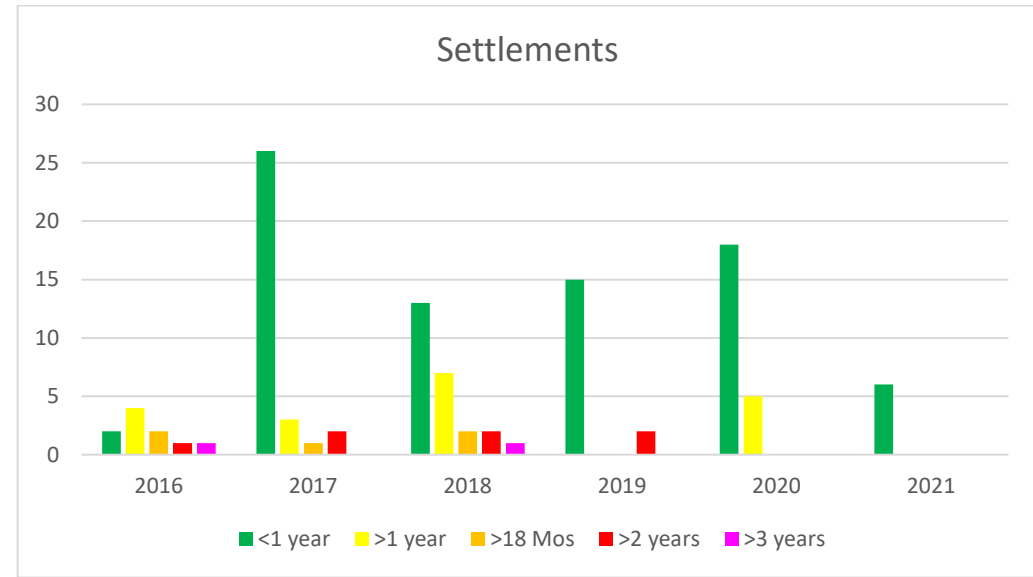
	2016	2017	2018	2019	2020	2021
<1 year	11	25	10	8	6	4
>1 year	1	1	1	0	0	0
>18 Mos	1	1	0	0	1	0
>2 years	0	0	1	0	0	0
>3 years	0	1	1	0	0	0



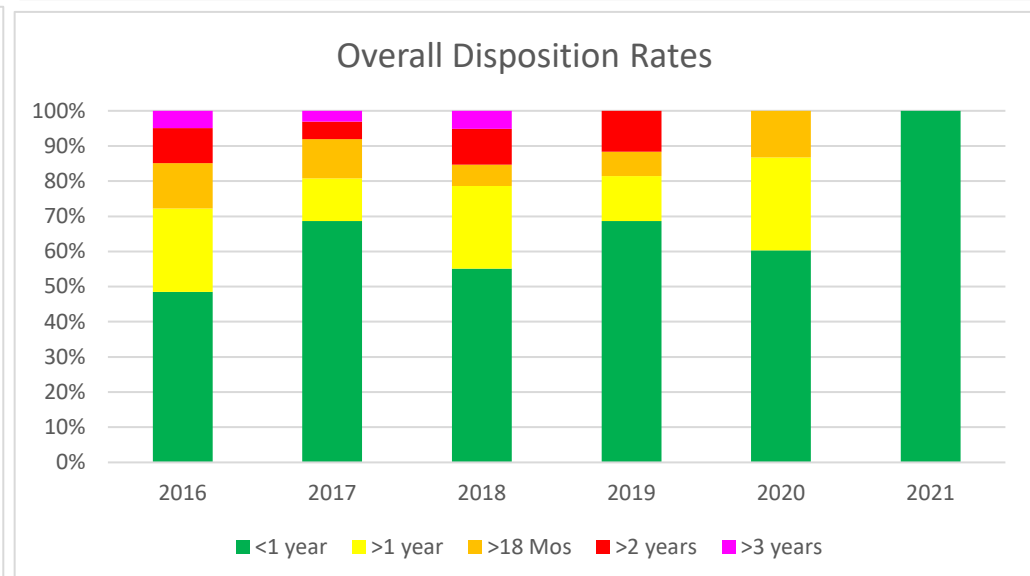
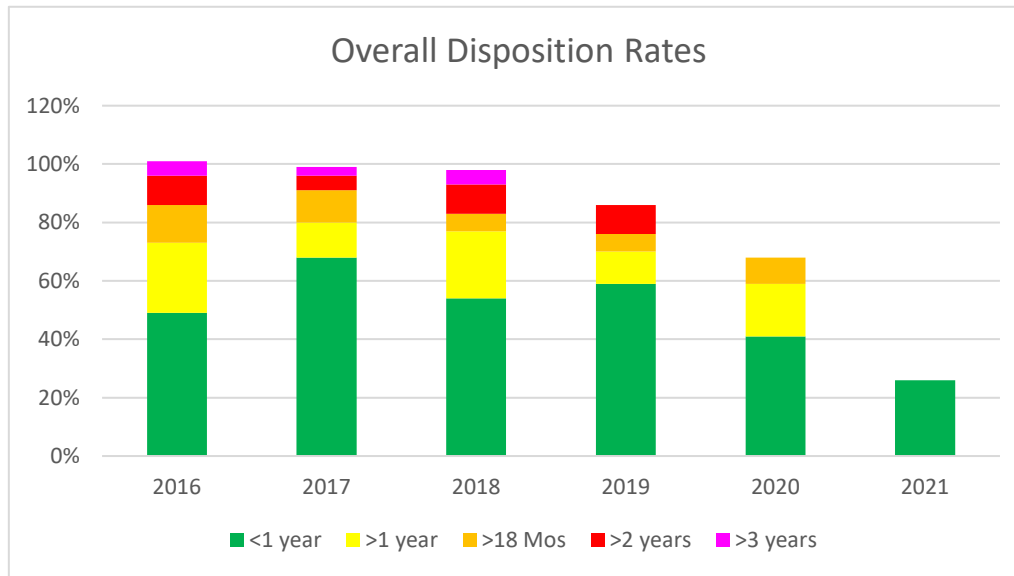
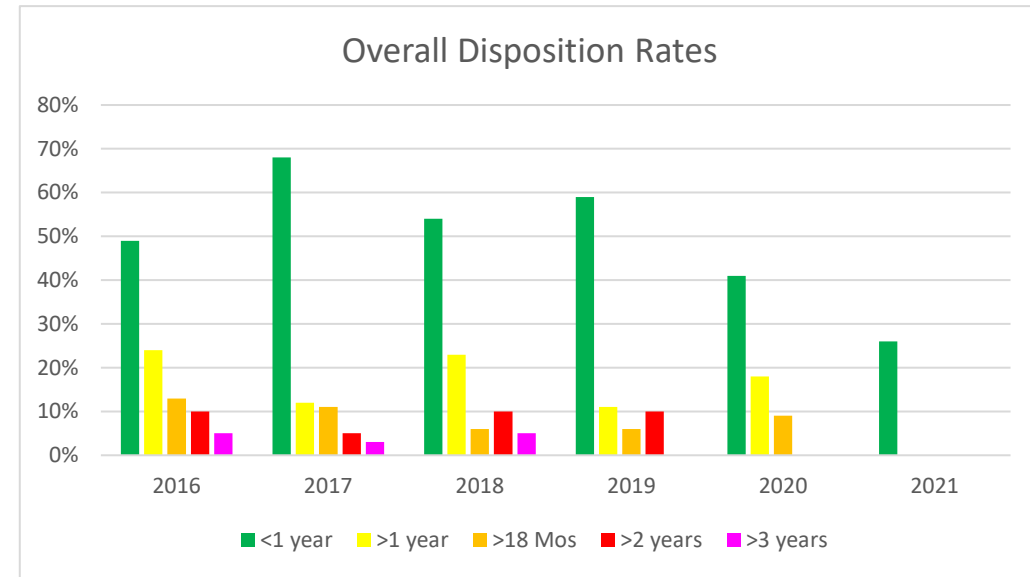
	2016	2017	2018	2019	2020	2021
<1 year	16	26	15	18	9	2
>1 year	9	6	13	6	6	0
>18 Mos	2	8	2	3	4	0
>2 years	6	3	3	5	0	0
>3 years	2	1	2	0	0	0



	2016	2017	2018	2019	2020	2021
<1 year	2	26	13	15	18	6
>1 year	4	3	7	0	5	0
>18 Mos	2	1	2	0	0	0
>2 years	1	2	2	2	0	0
>3 years	1	0	1	0	0	0



	2016	2017	2018	2019	2020	2021
<1 year	49%	68%	54%	59%	41%	26%
>1 year	24%	12%	23%	11%	18%	0%
>18 Mos	13%	11%	6%	6%	9%	0%
>2 years	10%	5%	10%	10%	0%	0%
>3 years	5%	3%	5%	0%	0%	0%



	2016	2017	2018	2019	2020	2021
<1 year	0	0	0	0	0	34
>1 year	0	0	0	0	14	0
>18 Mos	0	0	0	0	11	0
>2 years	0	0	0	12	2	0
>3 years	0	0	2	0	0	0

